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FISCAL IMPACT STATEMENT

LS 6704

BILL NUMBER: HB 1238

NOTE PREPARED: Jan 5, 2012

BILL AMENDED:

SUBJECT: Finding of Abandonment for Residential Property.

FIRST AUTHOR: Rep. Burton

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Foreclosure Prevention Agreements Statute Applications-* The bill specifies that for purposes of the statute governing foreclosure prevention agreements for residential mortgages, the statute: (1) applies to a mortgage made with respect to a dwelling that is occupied by the debtor as the principal residence of the debtor; and (2) does not apply to a mortgage made with respect to a dwelling that is purchased by the debtor as a second home or a vacation home and is not occupied by the debtor as the debtor's principal residence.

Procedure to Petition Court- The bill provides a procedure that allows: (1) a creditor in a residential mortgage; or (2) an enforcement authority with jurisdiction in the location of the mortgaged property; to petition the court having jurisdiction over an existing or a potential mortgage foreclosure action to find that the mortgaged property is abandoned. The bill provides that the creditor or enforcement authority may petition the court for a determination of abandonment: (1) in connection with an existing foreclosure action; or (2) before any foreclosure action is filed; by filing a complaint or a motion with the court, as appropriate. The bill specifies that if: (1) a petition is filed outside an existing foreclosure action; or (2) a petition is filed at the same time a foreclosure action is filed; the petitioner must include a notice containing certain information about the requested abandonment determination on the first page of the summons that is served on the debtor in conjunction with the complaint.

Notice Language- The bill requires the Housing and Community Development Authority (HCDA), in consultation with the Division of State Court Administration (DSCA), to prescribe, not later than June 1, 2012, language for the notice required to be included on the first page of the summons that is served on the debtor.

Court Procedure- The bill provides that upon receiving a petition for a determination of abandonment, the court shall issue an order to show cause as to why the property should or should not be found to be abandoned and to direct the appropriate parties to appear before the court on a date and time specified in the order. The bill provides that a party subject to the order has the right to: (1) present oral or written evidence or objections on the issue of abandonment to the court; and (2) be represented by an attorney when appearing before the court.

Court Hearing- The bill provides that the court shall hold a hearing on the issue of abandonment on the specified appearance date, subject to the court's right to cancel the hearing if the court: (1) receives a request for a settlement conference by the debtor before the specified appearance date; or (2) finds that a hearing would be of limited value based on written evidence or objections received by the court before the appearance date.

Court Order of Abandonment- The bill provides that after considering all evidence and objections presented on the issue of abandonment, the court shall issue an order finding that the mortgaged property is abandoned if the court determines that certain conditions apply with respect to the mortgaged property.

Conclusive Evidence of Abandonment- The bill provides that either or both of the following constitute conclusive evidence that the mortgaged property is abandoned: (1) Failure by the debtor to present evidence or objections on the issue of abandonment or to appear before the court on the specified appearance date. (2) The existence of one or more written statements, including documents of conveyance, that are executed by the debtor and indicate a clear intent to abandon the property.

Cross Reference & Technical Changes- The bill changes cross references. The bill makes technical changes.

Effective Date: Upon passage.

Explanation of State Expenditures:

Explanation of State Revenues: *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Notice Language- The HCDA and DSCA would be able to draft the language required to be placed on summons notices within existing revenues. The language would have to be placed on the HCDA's and DSCA's websites.

Explanation of Local Expenditures: *Procedure to Petition Court-* The Marion County Metropolitan Development Commission and unsafe building authorities, in counties with such enforcement authorities would have to include the language drafted by the HCDA and placed on their website on the first page of a summons to a property abandonment hearing. There would be some additional printing cost to place the language on a court summons document.

Additionally, county or municipal enforcement authorities could require additional expenditure to gather proper evidence and use of staff to present the county or municipality's position in a trial court. Any additional expenditures incurred by this provision would depend on local action.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: HCDA, DSCA.

Local Agencies Affected: Trial courts, city and town courts, Marion County Metropolitan Development Commission, counties that by ordinance established an authority to enforce unsafe building statutes.

Information Sources:

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